

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:06-CV-310-F

UNITED STATES OF AMERICA,       )  
                    Plaintiff,        )  
  )  
                    vs.                )  
  )  
SHELBY DAVIS, et al.,            )  
                    Defendants.     )

ORDER

This matter is before the court upon the United States of America's Motion to File Dispositive Motion Outside of Deadline [DE-78] and Motion to Remove Trial from Court's Calendar [DE-79]. Also before the court is Defendant D. Bernard Alston's verified Notice of "Withdrawal of Answer and Consent to Default Judgment" [DE-77].

**I. PROCEDURAL HISTORY**

On August 7, 2006, the United States of America initiated this action by filing a Complaint against the following defendants: Shelby Davis, D. Bernard Alston, Robert K. Catherwood, Bradley Electrical Contractors, Inc., Interior Distributors, Inc., Hedgecock Builders Supply of Greensboro, Coles Backhoe Service, Inc., Lewis Electric and Plumbing Co., Wadsworth Congregational Church, Unique Floor Coverings, Inc., Chamblee and Strickland Land Surveyors, Clarence Williams, Darryon Smith and Wife, Gwendolyn Smith, and Allpro Insulation Company. The Complaint seeks, *inter alia*, a declaration from the court that the Trustee's Deed to Shelby Davis recorded in Book 821, Page 654 in the Warren County Registry void ab initio. Compl. [DE-1] at unnumbered p. 5.

After initiating this action, the United States voluntarily dismissed Robert K. Catherwood, Allpro Insulation Company, and Coles Backhoe Service, Inc. On December 27, 2006, Defendant D. Bernard Alston filed an Answer. On February 7, 2007, the Clerk of Court filed an Entry of

Default as to Defendant Shelby Davis. On February 12, 2007, the Clerk of Court filed an Entry of Default as to Defendants Bradley Electrical Contractors, Inc., Interior Distributors, Inc., Hedgecock Builders Supply of Greensboro, Lewis Electric and Plumbing Co., Wadsworth Congregational Church, Unique Floor Coverings, Inc., Chamblee and Strickland Land Surveyors, Clarence Williams, Darryon Smith and Gwendolyn Smith. D. Bernard Alston, the lone defendant to have filed an Answer, filed a verified Notice of "Withdrawal of Answer and Consent to Default Judgment" [DE-77] on May 22, 2008.

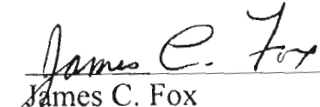
That same day, the United States filed the Motion to File Dispositive Motion Outside of Deadline [DE-78] and Motion to Remove Trial from Court's Calendar [DE-79].

## II. ANALYSIS

Based on Alston's "Withdrawal of Answer and Consent to Default Judgment" [DE-77], the Clerk of Court is DIRECTED to file an Entry of Default as to D. Bernard Alston. Pursuant to Rule 6(b)(2) of the Federal Rules of Civil Procedure, and for good cause shown, the United States' Motion to File Dispositive Motion Outside of Deadline [DE-78] is ALLOWED. After filing the Entry of Default as to D. Bernard Alston, the Clerk of Court is DIRECTED to file the United States' Motion for Final Default Judgment, and then submit the Motion for Default Judgment to the undersigned. Furthermore, the Motion to Remove Trial from Court's Calendar [DE-79] is ALLOWED, and the Clerk of Court is DIRECTED to remove this action from the undersigned's trial calendar.

SO ORDERED.

This the 29<sup>th</sup> day of May, 2008.

  
James C. Fox  
Senior United States District Judge